

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK09-40481-TJM
)	
RANDY E. ALLEN and)	CH. 13
ANN L. ALLEN,)	
)	
Debtor(s).)	

ORDER

Hearing was held in Omaha, Nebraska, on April 27, 2009 regarding Filing #14, Motion for Relief from Stay, filed by Pinnacle Bank, and Filing #19, Resistance, filed by debtors. David Lepant appeared for the debtors and Justin Kuntz appeared for Pinnacle Bank.

This case was filed on February 27, 2009. On that date, the debtors were delinquent on their pre-petition mortgage payments to Pinnacle Bank. Because of such delinquency, the escrow account for taxes and insurance was insufficient to allow Pinnacle Bank to make the tax and insurance payments due in the spring of 2009. Based upon the escrow shortage and the failure of the debtors to make post-petition payments, plus the fact that the bank's representatives felt the bank was undersecured, the bank filed this motion for relief from the automatic stay.

In resistance to the motion, the debtors assert that the April 1, 2009, payment was tendered, but refused by Pinnacle Bank. In addition, the debtors suggest that their plan, which apparently is now ready for confirmation, deals with the pre-petition delinquency. They claim to have saved the funds necessary to make the April payment and that they have sufficient funds on an ongoing basis to make regular payments to the bank, plus trustee payments.

In addition to the lack of funds in the escrow account, the bank suggests it is not adequately protected because an appraisal shows the property is worth a little more than \$34,000, and the debt is more than \$37,000. The debtors counter that the county assessor's records show the value of the property at \$48,000, giving them more than \$10,000 equity in the property.

The motion for relief is deferred. The debtors are to pay the April, May, and June 2009 regular mortgage payments and the bank is directed to accept and apply such payments, without prejudice to the bank's position.

If the bank has advanced any funds for the taxes that were due on May 1, 2009, or the insurance premium that was due April 7, 2009, it should account to the debtors and the court for such amounts. The debtors are then ordered to pay the bank, beginning in June 2009, \$100 per month in addition to their regular monthly mortgage payment to cure the delinquency caused by the bank's advances. If, on the other hand, the bank has made no such advances, the debtors shall file a status report as of June 15, 2009, explaining the status of the taxes and the insurance premiums. Upon receipt of such status report from the debtors, and any status report filed at approximately the same time by the bank, the court will review the ruling on the motion for relief from the automatic stay. In the meantime, the debtors shall make their payments, the bank shall accept their payments without prejudice to its position, and the automatic stay remains in place.

IT IS ORDERED that the Motion for Relief from Stay, Filing No. 14, is deferred.

DATED: May 19, 2009

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

David Lepant

*Justin Kuntz

Kathleen Laughlin

U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.